Supreme Court, U.S.
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No. 98-1098

In The

Supreme Court of the United States

October Term, 1998

J. HOWARD FLINT, JR., AND CARLON S. FLINT,

Petitioners,

v.

EVA L. DAVIS (IN VARIOUS CAPACITIES),

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Virginia

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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ARGUMENTS RESPONSIVE TO BRIEF IN OPPOSITION

Petitioners reliance on USCS § 1257 is in (3), where a . . . right, privilege . . . is specially . . . claimed under the Constitution . . . , is the issue for the U.S. Supreme Court to have jurisdiction under the 14th Amendment thereto. Petitioners did raise this 14th Amendment matter in the Circuit Court below (see for example, the Objection attachment to Final Decree in Chancery No. 17813 in the Appendix to the Petition, p. 7a, *17a*, and by reference thereto in the Request For Reconsideration (App. p. 18a, l's 3 & 4 thereof), Appeal Petition and Request for Reconsideration to the Virginia Supreme Court (p. 10, l. 12 in both, and p. 15, l. 1 also in the latter)).

The "How" of how the 14th Amendment rights are violated are especially set forth in the Appendix, pp. 7a-18a, that the Circuit Court and Virginia Supreme Court did not abide by the Virginia law because this "right" and "privilege" was violated by the Virginia Courts since the Circuit Court erred in its ruling as explained in the Objection to its decision, and since the Circuit Court never specifically stated why as it could not on the facts as explained in the Objection. Under the secrecy and circumstances made by the Respondents, as stated in the Petition, Petitioners could not make this issue earlier (see Circuit Court transcript, Jan. 9, 1998, p. 5, last line bridging to p. 6, l. 4, as to a verified copy of Mrs. Flint's 1998 will).

Mrs. Ida Flint was both (co-) Settlor *and Trustee*, and by her amendments to herself as Trustee (see top of p. 7 of Respondents Opposition brief) to remove her husband's heirs from the Trust A and from her estate, she violated her higher duties as Trustee where there was *conflict* of interest, and against Virginia law, section 64.1-67.2 and the IRS Code (previously cited App. p. 9a)

and as explained in the Alvarez decision (previously cited), among many, for *self engrandizement against the interest of her husband.* The *only issue* decided in Chancery No. 15055, as stated in the Petition to the U.S. Supreme Court, was in regards to Mrs. Flint's right to *revoke* (an error) and that she did. Therefore, nothing there in the Circuit Court involved the pair of 1988 identical wills or as they are a contract under the long-standing Virginia case law was ever raised or decided and thus was and is no bar as the Court later held (again, see the Objection, App., pp. 7a-18a). The Deed of Gift, also executed June 4, 1988, to transfer their 333 acre farm was the consideration by Mr. and Mrs. Flint to each other to perfect the contract created by their identical 1988 wills. That all the litigation is over the beneficiaries' interests, the various issues in such various litigations are not specifically alike, which the Virginia law for a res adjudicata requires (as explained in the Petition).

Withdrawal by the Flint brothers, Petitioners, in Chancery No. 15886, regarding the 1994 (second) will, was in view of Virginia law, as previously explained in the Petition. Such decided issue in that case (App. p. 25a regarding that will of decendent (sic), has no relationship to the pair of 1988 wills contract (as in the manner of the Williams v. Williams decision, cited and applied in the Petition), and thus neither that case nor the decision therein is the same subject matter then or with the decided issue in Chancery No. 15055 specifically for a res adjudicata.

Carlon Flint was pro se on the Virginia appeals and the instant petition because his attorney had withdrawn prior to the manifestation of those appeals and the instant one on the issue of this case, so that he had no attorney for the issue of these appeals. Subsequent to and immediately after Mr. Flint's death, his share of the Flint Trust

was distributed to fund trust B, the bi-pass trust, as the Trust required with the leftover of his share lodged into trust A with Mrs. Flint's share. Respondents reply is in error, p. 5, l. 26, since it was *Mrs.* Flint's share which did not require additional funding upon Mr. Flint's death. Trust B, in a hearing subsequent to the Circuit Court decision on the revocation, was found underfunded on two (2) counts of nearly 1/6 by the Trustees in a breach of fiduciary duty with an order by the Court to complement it fully (note footnote #4, p. 6 of Respondent's Reply).

A reading of the Williams v. Williams decision (cited in the Petition) certainly manifests *nothing* about a *revocable trust*, but it does deal with *identical* wills having consideration in the Court of *Equity* in Virginia, and need not state therein that the wills are a contract. Virginia law, as previously applied in the court below, permits a will to designate a trustee of a trust to receive the benefits of the will(s), which trust designated in the Will(s) itself recites those who are heirs to the property. Respondent's reply makes no mention of Article I(C) in both of Mr. and Mrs. Flint's wills, where a *testamentary* trust is recited (by incorporation) and this never was considered by the Circuit Court (Respondents' direct ascertion to the contrary not withstanding in her Brief in Opposition, p. 12, last line bridging to p. 13) because that Court was merely considering the separate inter vivos trust document.

From Mr. Flint's death, *Petitioners had standing* via his 1988 will and Trust B. In a will contract, per the Williams v. Williams dictum, wills in a contract situation are no longer ambulatory after the death of the first party thereto. So called contributions by Mrs. Flint of additional assets to the trust (A) some time after Mr. Flint's death, were largely from assets Mrs. Flint as Trustee withheld from the Flint Trust for several years, when in fact the Flint Trust at Article 2, said they "*have*" put *all*

their assets into the Trust on a 1 to 1 share basis, which she as Trustee did not do, including a large value of stock which was in his name only but which she had appropriated, all brought out in filed papers and in hearings before the Circuit Court.

Certainly all the documents from Chancery No. 15055 were admitted, but *no explanations* as to the issues therewith were made, which were absolutely different than actions in this case here on Petition. These documents did not and could not include Mrs. Flint's 1988 Will because Respondents have never submitted (and refused to) the original of that 1988 Will in Chancery No. 15055, or at any time since, for the Court below to make any decision with respect thereto. Respondent constantly states (see bottom of Opposition reply page 11) there must be "precisely the same question . . . issue . . . which had been tried and finally determined upon the merits" but then in fact were not in Chancery No. 15055 as the issue in the instant case on the wills contract, which the Circuit Court decision in Chancery No. 15055 shows (App. pp. 19a, 21a, & 22a) it *did not* do. A "different construction" is certainly a *different issue.*

There is indeed error by the Virginia Courts failing to follow Virginia law, as previously explained, and thus there is denial of the U.S. Constitutional Rights of the 14th Amendment as to the rights and privileges granted therein and as extended to one in the States under the State laws, here ignored and abridged and asserted in the Circuit Court and both appeals to the Virginia Supreme Court (supra). One cannot assert such a right in a lower Court until the need arises and one sees it as being denied during Court Proceedings because one must and should presume the Court will be fair and administer justice according to the laws, until it is obvious otherwise. Oral arguments were indeed made before the Circuit

Court on these U.S. Constitutional rights of the 14th Amendment, Respondent's remarks to the contrary notwithstanding. The hand written statement (referred to in the opposition reply, bottom of p. 8) was quickly followed by the same typewritten (see App. pp. 7a-18a of the Petition). Certainly a State Circuit Court cannot directly address federal claims because it lacks Jurisdiction (except to note it – as the Court has several times orally). Even though Petitioners are pro se, they have made and preserved their Federal Constitutional rights from the Circuit Court through the Virginia Supreme Court to now. This Petition is directly related to the Wills contract plead, but improperly denied on a res adjudicata, later asserted, and thus there is indeed denial of our U.S. 14th Amendment rights (see Circuit Court transcript, Jan. 9, 1998, pp. 17-36, regarding the reasons for no res adjudicata).

Respondents footnote #3, bottom of p. 5, asserting several criticisms of Petitioner's "Statement of Facts" and a demand to correct under rule 15.2, is not only totally absurd since the facts are correct, but in no way specifically points out where any errors may be. The above arguments are made wholly in response to Respondents Brief in Opposition.

Noted typographical errors in Petitioner's brief are: p. iii, Table of Contents, appendix, l. 2, "1988" is 1998; appendix p. 25a, l. 6, the last word is *decedent*; p. 4, l. 9, correct spelling of *Settlors*; p. 17a, l. 8, correct spelling of Equity.

Respectfully submitted,

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